

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #283 (“Government Fees”)</p> <p>Petitioner: Norma B. Akright,</p> <p>v.</p> <p>Respondents: Michele Haedrich and Steven Ward,</p> <p>and</p> <p>Title Board: Theresa Conley, Jason Gelender, and Kurt Morrison</p>	
<p>Attorneys for Petitioner:</p> <p>Mark G. Grueskin, #14621 Nathan Bruggeman, #39621 Recht Kornfeld, P.C. 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900 (telephone) 303-446-9400 (facsimile) mark@rklawpc.com; nate@rklawpc.com</p>	<p>Case Number:</p>
<p style="text-align: center;">PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2023-2024 #283 (“GOVERNMENT FEES”)</p>	

Norma B. Akright, registered elector of Montrose County and the State of Colorado (“Petitioner”), through undersigned counsel, respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Initiative 2023-2024 #283 (“Government Fees”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2023-2024 #283.

Michele Haedrich and Steven Ward (hereafter “Proponents”) proposed Initiative 2023-2024 #283 (the “Proposed Initiative”). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, Proponents submitted final versions of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or her designee is a member.

A Title Board hearing was held on April 17, 2024, at which time titles were set for 2023-2024 #283. On April 24, 2024, Petitioner filed a Motion for Rehearing, alleging that Initiative #283 contained multiple subjects, contrary to Colo. Const. art. V, sec. 1(5.5), the Board lacked jurisdiction to set titles, and that the Title Board set titles which are misleading and incomplete as they do not fairly communicate the true intent and meaning of the measure and will mislead voters.

The rehearing was held on April 25, 2024, at which time the Title Board granted the Motion for Rehearing only to the extent the Board made changes to the title.

B. Jurisdiction

Petitioner is entitled to review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioner timely filed this Petition for Review within seven days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final version of the initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Motion for Rehearing filed by the Petitioner; and (4) the ruling on the Motion for Rehearing as reflected by the title and ballot title and submission clause set by the Board. Petitioner believes that the Title Board erred in denying certain aspects of the Motion for Rehearing. The matter is properly before this Court.

GROUND FOR APPEAL

The titles set by the Title Board violate the legal requirements imposed on the Board because it lacked jurisdiction to set titles for the Initiative and the titles set by the Board violate the “clear ballot title” requirement by omitting critical

elements of the measure and will mislead voters. The following is an advisory list of issues to be addressed in Petitioner's brief:

1. Whether Initiative #283 violates the single subject requirement by surreptitiously converting fees into taxes if they are paid by a third party or if they do not confer a specific benefit on the fee payers.

2. Whether Initiative #283 violates the single subject requirement by surreptitiously converting regulatory charges, previously deemed "fees," into taxes if they do not confer a specific benefit on the fee payer but instead benefit the public.

3. Whether the ballot title set by the Title Board is misleading by stating that the measure "limit[s]" new or increased fees but the fiscal impact analysis states the effect of Initiative #283 does not support this unconditional statement.

4. Whether the ballot title set by the Title Board is misleading by stating "fees" are not subject to voter approval when only fees paid by the beneficiary of a governmentally provided service or good are exempt from voter approval but the same fee, if paid by a third party or that provides benefits to third parties, will require voter approval.

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the titles are legally flawed, and direct the Title Board to return the initiative to the designated representative for lack of jurisdiction or, in the alternative, to correct the title to address the deficiencies outlined in Petitioner's briefs.

Respectfully submitted this 2nd day of May, 2024.

s/ Mark G. Grueskin

Mark G. Grueskin, #14621

Nathan Bruggeman, #39621

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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I, Erin Mohr, hereby affirm that a true and accurate copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2023-2024 #283 (“GOVERNMENT FEES”)** was sent electronically via Colorado Courts E-Filing this day, May 2, 2024, to the following:

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/s Erin Mohr _____

DATE FILED: May 2, 2024 11:03 AM



STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal summary, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2023-2024 #283 'Government Fees'"



.....**IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado,
at the City of Denver this 1st day of May, 2024.

Jena Griswold

SECRETARY OF STATE



2023-2024 #283 – Final [technical correction]

Be it Enacted by the People of the State of Colorado:

SECTION 1. In the Colorado constitution, section 20 of article X, **add** (2)(d.5) as follows:

(2) Term definitions. Within this section:

(d.5) “FEE” MEANS A VOLUNTARILY INCURRED GOVERNMENTAL CHARGE IN EXCHANGE FOR SPECIFIC BENEFIT CONFERRED ON THE PAYER, WHICH FEE SHOULD REASONABLY APPROXIMATE THE PAYER'S FAIR SHARE OF THE COSTS INCURRED BY THE GOVERNMENT IN PROVIDING SAID SPECIFIC BENEFIT.

SECTION 2. Effective date – applicability.

(1) Effective date. This act takes effect on upon the official declaration of the vote thereon by proclamation of the Governor.

(2) This definition applies to fees enacted or increased on or after the effective date of this act.

Ballot Title Setting Board

Proposed Initiative 2023-2024 #283¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution limiting new or increased fees, and, in connection therewith, specifying the requirements that such a fee must satisfy to be a “fee” for purposes of the Taxpayer's Bill of Rights (TABOR) by allowing such a fee to be imposed only in an amount that reasonably approximates the payor’s fair share of costs incurred by government in conferring a specific benefit to the payor and requiring such a fee to be voluntarily paid in exchange for the specific benefit.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution limiting new or increased fees, and, in connection therewith, specifying the requirements that such a fee must satisfy to be a “fee” for purposes of the Taxpayer's Bill of Rights (TABOR) by allowing such a fee to be imposed only in an amount that reasonably approximates the payor’s fair share of costs incurred by government in conferring a specific benefit to the payor and requiring such a fee to be voluntarily paid in exchange for the specific benefit?

Hearing April 17, 2024:

Single subject approved; staff draft amended; titles set.

The Board determined that the proposed initiative requires the addition of language to the Colorado Constitution. The requirement for approval by fifty-five percent of the votes cast applies to this initiative.

The Board made technical corrections to the text of the initiative.

Board members: Theresa Conley, Jason Gelender, Kurt Morrison

Hearing adjourned 11:34 A.M.

¹ Unofficially captioned “**Government Fees**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Ballot Title Setting Board

Proposed Initiative 2023-2024 #283¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution limiting new or increased fees, and, in connection therewith, defining a “fee”, which does not require voter approval, as opposed to a tax, which does require voter approval, as a governmental charge voluntarily paid in exchange for specific benefit provided to the payer in an amount that should reasonably approximate the payer’s share of the costs incurred by the government in providing the benefit.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution limiting new or increased fees, and, in connection therewith, defining a “fee”, which does not require voter approval, as opposed to a tax, which does require voter approval, as a governmental charge voluntarily paid in exchange for specific benefit provided to the payer in an amount that should reasonably approximate the payer’s share of the costs incurred by the government in providing the benefit?

Hearing April 17, 2024:

Single subject approved; staff draft amended; titles set.

The Board determined that the proposed initiative requires the addition of language to the Colorado Constitution. The requirement for approval by fifty-five percent of the votes cast applies to this initiative.

The Board made technical corrections to the text of the initiative.

Board members: Theresa Conley, Jason Gelender, Kurt Morrison

Hearing adjourned 11:34 A.M.

Rehearing April 25, 2024

Motion for rehearing (Akright) was granted only to the extent the Board made changes to the title (3-0).

Board members: Theresa Conley, Jason Gelender, Kurt Morrison

Hearing adjourned 12:15 P.M.

¹ Unofficially captioned “**Government Fees**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Norma B. Akright,
Objector,

v.

Michele Haedrich and Steven Ward,
Proponents of Initiative 2023-2024 #283.

**MOTION FOR REHEARING ON
INITIATIVE 2023-2024 #283**

Through legal counsel, Norma B. Akright, registered elector of Montrose County, hereby files this motion for rehearing on Initiative 2023-2024 #283.

On April 17, 2024, the Title Setting Board erred in setting the following ballot title and submission clause for Initiative 2023-2024 #283:

Shall there be an amendment to the Colorado constitution limiting new or increased fees, and, in connection therewith, specifying the requirements that such a fee must satisfy to be a “fee” for purposes of the Taxpayer's Bill of Rights (TABOR) by allowing such a fee to be imposed only in an amount that reasonably approximates the payor’s fair share of costs incurred by government in conferring a specific benefit to the payor and requiring such a fee to be voluntarily paid in exchange for the specific benefit?

I. The Title Board lacked jurisdiction to set titles.

A. This initiative contains multiple subjects.

The initiative covertly converts certain fees into taxes. Voters will not know about this surreptitious change that will require such fees or increases in fees to be approved by voters as if they were taxes.

1. Initiative #283 excludes from “fee” any charges that are paid by third parties, which is written to confuse voters about the reach of this measure.

Under this measure, a charge qualifies as a “fee” only if: (1) the fee-payer is the user of the government service; and (2) if the charge imposed is “in exchange for specific benefit conferred on the payer.”

When a parent pays his university student's athletic fee so the student can attend intercollegiate athletic contests, the payer is the parent but receives no "specific benefit" from the fee payment. When a friend pays a rec center fee for her roommate so the roommate can use the rec center for a day, the payer is the friend but that person receives no "specific benefit" from the fee payment. When a spouse pays her husband's specialty license plate fee, the payer is the spouse but that person receives no "specific benefit" from the fee payment. For that matter, an insurance company that pays a charge into workers comp-related funds or an oil company that pays a charge into the Petroleum Storage Tank Fund do not, by that fact alone, provide a "specific benefit" attributable to payers for their payments. *See Barber v. Ritter*, 196 P.3d 238, 243 (Colo. 2008).

Initiative #283 surreptitiously makes the identity of the payer, not the function or purpose or actual use of the imposition, the key test in determining what will and what will not qualify as a "fee." What is a fee for one person (if that is the person who pays) is not a fee for another (if that is a person where a third party pays).

Further, because a fee under #283 must be calibrated to reflect "the payer's fair share of the costs incurred by the government in providing said specific benefit" and in many instances there is no "specific benefit" that runs to the payer, the reasonable relationship element of the fee definition would never apply to third party fee payers. Thus, because neither element of the fee definition would be satisfied in such cases, an imposition will never be treated as a fee whenever the payer of the fee is not also the party receiving the government good or service.

As #283 is drafted, then, voters will unknowingly require fees to be subject to TABOR's voter approval requirement for new taxes and tax increases, depending on the identity of the payer. Colo. Const., art. X, sec. 20(4)(a). As Proponents admitted at the Title Board hearing, the non-fee payments will also affect what is counted toward a government's TABOR caps. Thus, there will be a two-fold surprise for voters who think they are adopting a simple definition that is equally applicable to all fees. And those surprises are single subject violations that need to be remedied by the Title Board by refusing to set titles for this initiative.

2. *Initiative #283 also prohibits, without admitting it does so, regulatory charges that confer no "specific benefit" upon the fee payers.*

As a general matter, certain fees are imposed pursuant to government's police power and thus serve a regulatory purpose. An imposition is a regulatory charge if it is "imposed as part of a comprehensive regulatory scheme, and if the primary purpose of the charge is to defray the reasonable direct and indirect costs of providing a service or regulating an activity under that scheme." *Colo. Union of Taxpayers Found. v. City of Aspen*, 2018 CO 36, ¶26 ("*CUT Found.*"). In such instances, benefits stemming from the regulatory program "are shared by citizens and visitors who never pay the charge because they never use" the service provided. *Id.*, ¶30.

In contrast to what is known as a proprietary fee where there is a payment exchanged for a specific service, *see, e.g., Perl-Mack Enterprises Co. v. Denver*, 568 P.2d 468, 472 (Colo. 1972), a “regulatory charge” involves no such transaction between government and a recipient of a service. Aspen’s bag charge was one such example. *CUT Found., supra*, 2018 CO 36, ¶30.

The danger here is that voters will not know that they are converting fees into taxes. At least the original version of this measure identified “prohibited fees.” Their revised version does not, and the treatment of fees as taxes is hidden from voters in violation of the single subject requirement. A key purpose of that mandate is, after all, “to prevent surprise and fraud from being practiced upon voters.” C.R.S. § 1-40-106.5(1)(e)(II).

In this regard, the title misstates the subject of #283. The subject is not “limiting new or increased fees.” It could be more accurately described as “converting certain state or local fees into taxes.” Or “prohibiting state or local fees unless fee payers receive, in return, specific benefit.” Or even “defining the term, ‘fee.’”

It is not an answer to this concern merely to say that the courts will figure it out after the election. That response ignores the essential protection for voters that the single subject requirement is supposed to afford. Specifically, the single subject requirement insulates voters from “the inadvertent passage of a surreptitious provision coiled up in the folds of a complex initiative.” *In re Title, Ballot Title & Submission Clause for 2007-2008 #17*, 172 P.3d 871, 875 (Colo. 2007)

Neither is this a mere “effect” of the measure. Proponents used language in Initiative #283 that is intended to, and does, change the legality and the treatment of various fees including regulatory fees. But the measure never makes that clear. In no small part, Initiative #283 does this because it now would require that a fee be “voluntarily incurred” when the state of the law in Colorado has been just the opposite. *Bloom v. City of Ft. Collins*, 784 P.2d 304, 310 (Colo. 1989) (“We have never held, however, that a service fee must be voluntary”).

And finally, it is no answer to say that the Supreme Court approved the initiative’s text a decade ago. That challenge to the single subject of this language was different in nature and kind from the legal points raised here, largely challenging language that is not included in this measure. Further, that single subject decision was handed down in 2014; the Court decided *Colo. Union of Taxpayers Found., supra*, dealing with regulatory charges, four years later. Therefore, the state of the law has evolved since the time when a portion of this initiative text was judicially approved based on a different single subject objection.

II. The title is misleading.

A. Initiative #283 does not just change “fee” for TABOR purposes; it changes “fee” as to every state statute and municipal ordinance.

The title incorrectly states that new definition of “fee” only affects TABOR. But this constitutional definition applies much more broadly than that. At least 30 state statutes use the term and impose a “fee” as do many more municipal ordinances.

The “fee” definition may be placed in the constitutional provision known as TABOR, but that provision applies to every local unit of government including all districts. Voters should not be told this measure is limited in its reach when it is not.

When the Court considered the title to a similar measure 10 years ago, it did not use such a reference to TABOR. *See In re Title, Ballot Title and Submission Clause for 2013-2014 #129*, 2014 CO 53, 333 P.3d 101. The Board should not do so now.

B. The single subject statement – “an amendment to the Colorado constitution limiting new or increased fees” – is not balanced, factual, or fair.

The fiscal summary for this measure states:

State and local revenue. Defining “fee” in the state constitution **may reduce state and local government revenue** if the measure is interpreted as limiting the scope of charges that governments can impose without voter approval.... The measure does not have an immediate impact on economic activity. **Any economic impact would depend on how the measure is interpreted**, and subsequent government decision-making regarding fees and revenue in response to that interpretation.

https://leg.colorado.gov/sites/default/files/initiatives/2024%2523283FiscalSummary_00.pdf
(emphasis added).

If the budgetary experts advising the Title Board have the opinion that, at most, the new definition in Initiative #283 “may” limit imposition of fees, it is unreasonable for the Board to describe Initiative #283 primarily as “limiting new or increased fees.” This assessment is almost certain “to color the merit of the proposal on one side or the other.” *Say v. Baker*, 322 P.2d 31, 320 (Colo. 1958). Therefore, this language is neither neutral nor reflective of the fiscal analysis performed on this initiative.

As an alternative, it would be more accurate to say that this is an amendment “defining the term ‘fee,’ and in connection therewith....”

WHEREFORE, Objectors seek appropriate relief in light of the above claims, including the striking of the titles set and return of Initiative #283 to Proponents for failure to comply with the single subject requirement of Article V, sec. 1(5.5) of the Colorado Constitution and for failing to set an accurate title.

Respectfully submitted this 24th day of April, 2024.

RECHT KORNFELD, P.C.

s/ Mark G. Grueskin

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CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2023-2024 #283** was sent this day, the 24th day of April, 2024, via email to Proponents' legal counsel, to:

Suzanne Taheri
st@westglp.com

s/ Erin Mohr
Erin Mohr



Initiative 283

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Summary

Date: April 12, 2024

Fiscal Analyst: Emily Dohrman (303-866-3687)

LCS TITLE: GOVERNMENT FEES

Fiscal Summary of Initiative 283

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at leg.colorado.gov/bluebook. This fiscal summary identifies the following impact.

State and local revenue. Defining “fee” in the state constitution may reduce state and local government revenue if the measure is interpreted as limiting the scope of charges that governments can impose without voter approval.

State and local expenditures. The measure increases workload and expenditures for state agencies and local governments for legal services when issuing new fees and fee increases.

Economic impacts. The measure does not have an immediate impact on economic activity. Any economic impact would depend on how the measure is interpreted, and subsequent government decision-making regarding fees and revenue in response to that interpretation.